IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1806 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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FATEMAHAMMED J MIYANA BROTHER OF DHANBAI D/O JASHABHAI
Versus
COMMISSIONER OF POLICE AHMEDABAD

Appearance:
1. Special Civil Application No. 1806 of 2002
MR ANIL S DAVE for Petitioner No. 1
MS BANNA S DUTTA for Petitioner No. 1
MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 24-10-2001 passed by the

Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, three prohibition cases have been registered against the detenu. She has submitted that statements of witnesses have been recorded on 22-10-2001 and same have been verified by the detaining authority on 23-10-2001 and order has been passed on 24-10-2001. She has also submitted that a representation dated 30-1-2002 has been sent to the State Government which has been received by the authority on 1-2-2002. It is further submitted that though said representation has been rejected on 5-2-2002, it was replied to the detenu vide letter dated 18-2-2002 sent by the detaining authority and, therefore, there is a delay in considering the representation and communicating the same to detenu. Learned APP has fairly admitted the same. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

"The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

6. In the present case, it appears that the representation dated 30-1-2002 was to the State Government which was received by the State Government on 1-2-2002 and though said representation has been rejected by the authority on 5-2-2002, same has been communicated to the detenu on 18-2-2002 i.e. after a period of 13 days However, no explanation has been putforward by the authority by filing an affidavit explaining satisfactorily the delay caused in communicating the decision to the detenu.

7. Since no explanation has been putforth by the concerned authorities for not communicating the decision of rejection of his representation till 18-2-2002, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

8. The petition is allowed. The impugned order of detention dated 24-10-2001 passed against the detenu is hereby quashed and set aside. The detenu Dhanbai, D/o Jasabhai Miyana is ordered to be set at liberty forthwith, if not required in any other case. Ld. advocate for the petitioner states that petitioner shall stay away from Ahmedabad for a period of 15 days from the date of release. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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